

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT 1995 SUBMISSIONS

**A. Justification**

1. *Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.*

Section 502(c)(2) of the Employee Retirement Income Security Act of 1974 (ERISA), authorizes the Secretary of Labor to assess civil penalties of up to \$1,000 a day (for violations occurring after July 29, 1997, the civil penalty is adjusted to \$1,100 a day<sup>1</sup>) against plan administrators who fail or refuse to file complete and timely annual reports (Form 5500 Annual Return/Report of Employee Benefit Plan (OMB #1210-0110)) as required under section 101(b)(1) of ERISA and ERISA regulations codified in 29 CFR part 2520. Pursuant to 29 CFR 2560.502c-2 and 2570.60 *et seq.*, the Employee Benefits Security Administration (EBSA) has maintained a program for the assessment of civil penalties for noncompliance with the annual reporting requirements. Under this program, plan administrators filing annual reports after the date on which the report was required to be filed may be assessed \$50 per day for each day an annual report is filed after the date on which the report was required to be filed, without regard to any extensions for filing. Plan administrators who fail to file an annual report may be assessed a penalty of \$300 per day, up to \$30,000 per year, until a complete annual report is filed. Penalties are applicable to each annual report required to be filed under Title I of ERISA. The Department may, in its discretion, waive all or part of a civil penalty assessed under section 502(c)(2) of ERISA, upon a showing by the administrator that there was reasonable cause for the failure to file a complete and timely annual report.

The Department has determined that the possible assessment of the above-described civil penalties may deter certain delinquent filers from voluntarily complying with the annual reporting requirements under Title I of ERISA. In an effort to encourage annual reporting compliance, therefore, the Department implemented the Delinquent Filer Voluntary Compliance Program (the DFVC Program) on April 27, 1995 (60 FR 20873) (the Notice). Under the DFVC Program, administrators otherwise subject to the assessment of higher civil penalties are permitted to pay reduced civil penalties for voluntarily complying with the annual reporting requirements under Title I of ERISA.

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<sup>1</sup> See Final Rule Relating to Adjustment of Civil Monetary Penalties (62 FR 40696, July 29, 1997).

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2. *Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.*

Under Title I of ERISA, the administrator of each welfare plan and each pension plan, unless otherwise exempt, is required to file an annual report with the Secretary containing the information set forth in Section 103 of ERISA. The statutory annual reporting requirements under Titles I and IV of ERISA, as well as the Internal Revenue Code (the Code), are satisfied generally by filing the appropriate annual return/report (the Form 5500). The Form 5500 is filed once and applicable data is shared among the federal agencies with authority to collect the information (Department, Internal Revenue Service, Pension Benefit Guaranty Corporation, and Social Security Administration, or “the Agencies”). For the Department, the Form 5500 collection has been approved under the Paperwork Reduction Act and given OMB control number 1210-0110.

The DFVC Program is intended to encourage, through the use of reduced civil penalties, delinquent plan administrators to comply with their annual reporting obligations under Title I of ERISA. Delinquent plan administrators are those who fail to file timely annual reports for plan years beginning on or after January 1, 1988. Eligible plan administrators may avail themselves of the DFVC Program by complying with the filing requirements and paying the specified civil penalties set out in the Notice.

The only information collection requirement included in the DFVC Program is the requirement of providing data necessary to identify the plan along with the penalty payment. This data is the only means by which each penalty payment is associated with the relevant plan. If the Department were unable to determine readily whether a penalty had already been paid as a result of a late filing, an additional penalty might be assessed when it was determined that the filing was received after the deadline. This would result in unnecessary burden for the plan and additional cost to the government even though the delinquency had already been resolved. With respect to most pension plans and welfare plans, the requirement is satisfied by sending, along with the penalty payment, a copy of the delinquent annual report (without attachments or schedules) which is filed with the Department at a different address under the EFAST system. In the event that the plan administrator files the delinquent annual report using a 1998 or prior plan year form, a paper copy of only the first page of the Form 5500 or Form 5500-C, as applicable, should be submitted along with the penalty payment.

Certain pension plans for highly compensated employees, commonly called “top hat” plans, and apprenticeship plans may file a one-time statement in lieu of annual reports. With respect to such plans, information collection requirements of the DFVC Program are satisfied by sending a completed first page of an annual report form along with the penalty payment. The one-time statements are required to be sent to a different address

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within the Department. The DFVC Program is designed to allow the processing of all penalty payments at a single location within the Department.

3. *Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also, describe any consideration for using information technology to reduce burden.*

Under 29 C.F.R. § 2520.104b-1(b) of ERISA, “where certain material, including reports, statements, and documents, is required under Part I of the Act and this part to be furnished either by direct operation of law or an individual request, the plan administrator shall use measures reasonably calculated to ensure actual receipt of the material by plan participants and beneficiaries.” Section 2520.104b-1(c) establishes the manner in which disclosures under Title I of ERISA made through electronic media will be deemed to satisfy the requirement of § 2520.104b-1(b). Section 2520-107-1 establishes standards concerning the use of electronic media for maintenance and retention of records. Under these rules, all pension and welfare plans covered under Title I of ERISA may use electronic media to satisfy disclosure and recordkeeping obligations, subject to specific safeguards.

The Government Paperwork Elimination Act (GPEA) requires agencies to allow customers the option to submit information or transact with the government electronically, when practicable. Where feasible, and subject to resource availability and resolution of legal issues, EBSA has implemented the electronic acceptance of information submitted by customers to the federal government.

4. *Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.*

The Agencies utilize a consolidated annual report that eliminates the duplicative reporting that would otherwise result from the separate reporting to each agency. However, DFVC Program applies only to the Department. There is no similar information gathered by any state or Federal agency or other sources that would enable the Department to effectively monitor participation in the program.

5. *If the collection of information impacts small businesses or other small entities describe any methods used to minimize burden.*

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No separate administrative provisions apply to small versus large businesses. Under the terms of the DFVC Program, small plans, that is, plans with fewer than 100 participants, are assessed a lower penalty for each delinquent filing than large plans.

6. *Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.*

If the information collection is not conducted, it may not be possible to continue the DFVC Program because the Department would be unable to determine whether persons seeking to take advantage of the reduced penalties offered under the program had in fact come into compliance with reporting requirements. The purpose of the program is to encourage delinquent plan administrators to come forward and file the required reports. Lack of compliance with existing filing requirements impairs the administration and enforcement of the statute, and the quality and timeliness of information available on ERISA-covered employee benefit plans. The information collection in the DFVC Program is intended to place a minimal burden on plan administrators who have failed to comply with reporting requirements, while at the same time offering a method of correction at reasonable cost to the administrator.

7. *Explain any special circumstances that would cause an information collection to be conducted in a manner:*

- *requiring respondents to report information to the agency more often than quarterly;*
- *requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;*
- *requiring respondents to submit more than an original and two copies of any document;*
- *requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;*
- *in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;*
- *requiring the use of a statistical data classification that has not been reviewed and approved by OMB;*

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- *that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or*
- *requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.*

None.

8. *If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.*

*Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.*

*Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years -- even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.*

The Department's notice for the Federal Register, as required by 5 CFR 1320.8(d), soliciting comments on the information collection, was published on November 29, 2013 (78 FR 71668). The notice provided the public with 60 days to comment on the Department's submission, and no comments were received.

9. *Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.*

No payments or gifts are provided to respondents.

10. *Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.*

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The annual reports are required by statute to be disclosed to participants and beneficiaries, and to the public. As such, the Department provides no assurance of confidentiality to respondents.

11. *Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.*

None.

12. *Provide estimates of the hour burden of the collection of information. The statement should:*

- *Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.*
- *If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.*
- *Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here.*

Burden hour estimates include the time required to determine the appropriate penalty and to submit this penalty amount to the Department. Using the average number of plans that participated in 2011 through 2013, the Department estimates the number of employee benefit plans filing annually under the DFVC Program is approximately 12,204. Participation in the DFVC Program is voluntary. The annual burden per filing is estimated to be approximately 30 minutes performed by a financial professional at an

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hourly labor rate of \$120.57.<sup>2</sup> The reporting burden on respondents is not expected to vary widely because of differences in activity, size, or complexity.

The total annual burden hour estimate is based on the assumption that 90 percent of DVFC Program filings are prepared by service providers, and the remaining 10 percent by in-house staff. The hour burden for the in-house preparation is considered in question 12; the cost burden for the preparation by service providers is considered in question 13. Therefore, the total annual hour burden is estimated to be about 610 hours (12,204 plan filings x 30 minutes x 10%). The equivalent cost of these burden hours for filings prepared in-house is estimated to be approximately \$74,000 (12,204 plan filings x 30 minutes x 10% \* \$120.57).<sup>3</sup>

13. *Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 or 14).*

As noted in item 12, only about 10% of plans are expected to use in-house staff to prepare the DVFC Program filing. Thus, 90% of plans are expected to use and pay service providers. The hourly labor cost for service providers to prepare the DVFC Program filing is estimated to be \$120.57. Therefore, the total annual cost burden for preparation is estimated to be approximately \$662,000 (12,204 x 30 minutes x 90% x \$120.57).

In addition, the cost of materials and certified mailing are estimated to total \$6.58 per filing (\$6.48 for certified mail with return receipt and 2 pages\*\$0.05/page), thus totaling approximately \$80,000 (12,204\*\$6.58). The labor cost for distribution by clerical staff is expected to be minimal. Therefore, the total annual cost burden for preparation and distribution is estimated to be approximately \$742,000 (\$662,000 for service provider preparation + \$80,000 for materials and postage).

14. *Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.*

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<sup>2</sup> The Department's estimated 2014 hourly labor rates include wages, other benefits, and overhead based on data from the National Occupational Employment Survey (March 2013, Bureau of Labor Statistics) and the Employment Cost Index (September 2013, Bureau of Labor Statistics); the 2012 estimated labor rates are then inflated to 2014 labor rates.

<sup>3</sup> Estimates for total burdens might differ from what is in the parentheses because of rounding.

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The Department has allocated 2.5 full-time employees (PTEs) at the GS-11 level to help administer the program. Using the salary of GS-11 step 5 for 2014 and an overhead and benefit estimate of 94 percent of salary, the Department estimates that labor costs to the government of administering the program is approximately \$346,000 (\$71,504\*1.94\*2.5).<sup>4</sup>

15. *Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.*

The total cost and hour burdens have been adjusted to reflect updated information on the number of plans utilizing the DFVC Program and updated postage and labor costs.

16. *For collections of information whose results will be published, outline plans for tabulation, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.*

This is not a collection of information for statistical use.

17. *If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.*

The collection of information will display a currently valid OMB control number.

18. *Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submission," of OMB 83-I.*

None.

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<sup>4</sup> This estimate for the Federal multiplier is based on estimates of wages being 69.7 percent of total compensation, and estimates that overhead costs adding another 35 percent in costs (1.35/.697)=1.94..